

201402074

Alejandro Rivas

A civilian, who had been standing on the street with two people he knew stated that a police officer approached them, cursed at them, then frisked them and searched them, then searched a nearby payphone. The officer found a box cutter (which the civilian uses for work) in the civilian's pocket and issued him a summons.

Officer Alejandro Rivas, when interviewed about the incident, stated that he had approached the people because he had arrested the other two for drug offenses before and thought they had stored drugs in the phone booth. He stated that he remembered the incident, that he had not cursed at the individuals, and, other than to take the box cutter, had not frisked or searched them.

As it turns out, the civilian had an audio recording device in his pocket during the encounter. After his statement, Officer Rivas was played the recording, in which an officer is heard saying, "shut the fuck up bro, do you think I am deaf?" Officer Rivas stated that the voice was not his. As the recording continued, the civilian asked the officer his shield number, and the voice, which Officer Rivas said was not his, provided Officer Rivas's shield number.

At this point, Officer Rivas's representative cut off the interview to consult with his client. When the interview resumed, Officer Rivas said that he had not remembered the incident before, but the recording had refreshed his recollection and that the civilian (whom he had previously described as calm) was belligerent, which is why he had cursed.

The CCRB found that Officer Rivas had conducted an unlawful frisk and an unlawful search and had lied during his CCRB interview.

The NYPD resolved the incident by issuing Officer Rivas a Command Discipline-A. He has since been promoted to detective and works in the detective squad of the 33rd precinct.

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## Interview Details

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### Complainant/Victim:

██████████ is a ██████████ year old, 5'7" tall, white male with brown eyes. ██████████ did not provide his weight or hair color.

██████████ works ██████████.

### CCRB Statement

On December 11, 2013, at approximately 4:00 p.m., ██████████ was walking from his apartment located at ██████████ in Manhattan to a Dunkin Donuts. ██████████ walked approximately 10 blocks to the intersection of ██████████. It took ██████████ approximately 10 minutes to get to the intersection. At the intersection ██████████ saw his friend ██████████ hanging out of the sidewalk. ██████████ does not know her last name and stated that he has known her for 6 months. According to ██████████ is a homeless drug addict. ██████████ has also tried to help her get clean. ██████████ stated that his friend ██████████ also approached him and ██████████ as they talked at the intersection. ██████████ is also homeless and ██████████ has known her for approximately 5 years.

According to ██████████ the conversation he and the three females had occurred on the northwest corner of the intersection. ██████████ stated that as they stood there he observed an unmarked light brown police vehicle heading down ██████████. At this time the two females moved away from ██████████ and talked 4 feet away at a payphone. The police vehicle then made a U-turn and approached ██████████ location. The car pulled up and the passenger side was parked closest to the sidewalk. ██████████ pointed at the police that was 8 feet away and stated to his friends, "Look the police." ██████████ stated he pointed at the officers because he was surprised they pulled up. Two officers then exited the police vehicle. PO1 was described as a Hispanic male, 5'7" to 5'8" tall, dark complexion, medium build and in uniform. PO2 was described as a Hispanic male, 6'2" tall, light skin, medium build and in uniform.

Upon exiting the vehicle, both officers approached ██████████ PO2 then made his way to the two females. PO1 stated to ██████████ "Shut-up, why did you warn your friends the police were coming?" PO1 also did not explain to ██████████ why he was upset and stated to ██████████ "Let us do our job." According to ██████████ PO1 also told him to "shut the fuck up" 3 to 4 times. ██████████ asked PO1 why he was talking to him like that and got a little upset.

PO1 then escorted ██████████ over to a scaffold located on the sidewalk approximately 4 feet away from PO2 and the other females. PO1 told ██████████ "Shut-up and stay here." ██████████ then read PO1's name off his shield and stated, "Rivera." PO Rivera then read his shield number to ██████████ and stated, "You think you are intimidating me bro?" PO Rivera then looked at ██████████ jeans and noticed a box-cutter in a right pocket located just above his knee. The top of the box-cutter was showing and ██████████ stated that the box-cutter is silver and six inches long. PO Rivera then reached and grabbed the box-cutter. ██████████ then pulled out a flashlight and screwdriver from his pockets in order to show PO Rivera he uses these items for work. ██████████ then asked, "Why are you taking my box-cutter, I use it for work?" PO Rivera then told ██████████ 3 to 4 times, "Shut the fuck up bro or you are going to prison." ██████████ stated this conversation lasted 5 minutes before PO2 stated out loud, "Everyone is getting a ticket."

██████████ also stated that PO2 frisked both ██████████ and ██████████. According to ██████████ the officers alleged one of the females went to get drugs. ██████████ stated that PO2 frisked each woman for one minute before he searched inside the payphone for 30 seconds for drugs. The officers then instructed everyone to walk to the police vehicle. ██████████ then handed the officers ██████████ identification and his own. The officers asked ██████████ why he had ██████████ identification. ██████████ explained two days prior, ██████████ gave him the ID because she did not want to lose it while she was on the street. ██████████ was going to take ██████████ to a methadone clinic. Mr.

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## Interview Details

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Alvarez then asked, "Why am I getting a ticket?" PO Rivera then stated, "If you don't shut-up, I can take you to jail for having your friend's ID and a box-cutter."

Both officers then went back to the vehicle and PO Rivera wrote the tickets. PO2 never got in the vehicle and walked back over to [REDACTED] and frisked over his front two sweatshirt pockets. This lasted for approximately 10 seconds. PO2 asked [REDACTED] "Why do you hang out with crack heads, does your church know?" PO2 then reached into [REDACTED] hoodie pocket and grabbed a 5 inch long Olympus recorder. PO Rivera kept his hand in the hoodie pocket and pulled off the microphone located at the top. [REDACTED] stated that before the incident occurred, he began recording his friend [REDACTED] staying stupid things. This recording was left on throughout the interaction with the officers.

After unplugging the recorder, PO2 walked away and sat in the passenger seat and stated to [REDACTED] "Another thing, you think that you're a lawyer, you have a box-cutter, your friends ID and your ID is expired." PO Rivera stated, "Just go downtown and pay the ticket because if we have to come back, you will pay double. PO Rivera then handed [REDACTED] a summons from inside the police vehicle. [REDACTED] received summons number [REDACTED] for possession of a box-cutter. [REDACTED] received a summons for disorderly conduct and [REDACTED] received a summons for an open container. According to [REDACTED] [REDACTED] was calm for the entire incident and [REDACTED] did not have anything on her.

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## Interview Details

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Interview: Police Officers Alejandro Rivas  
CCRB Case No. 201402074  
June 5, 2014

*On June 5, 2014, PO Rivas was interviewed at the Civilian Complaint Review Board. This interview began at 11:13 a.m. and concluded 11:56 a.m.*

*PO Rivas is a 42 year old Hispanic male with black hair and brown eyes. He is 5'7" tall and weighs 180 pounds.*

*On December 11, 2013, PO Rivas worked from 9:30 a.m. to 6:05 p.m. PO Rivas was dressed in uniform and was working as the Conditions Sergeant's Operator for Sgt. Fredy Cruz. The officers were operating an unmarked black Chevy Impala.*

### Memo Book

On December 11, 2013, at approximately 4:00 p.m., summons number [REDACTED] issued to [REDACTED]  
[REDACTED] Summons number [REDACTED] issued to [REDACTED]. Summons number [REDACTED] issued to [REDACTED]  
[REDACTED] for possession of a box-cutter.

### CCRB Statement

On December 11, 2013, at approximately 4:00 p.m., PO Rivas and Sgt. Cruz drove past two females standing at a phone booth near the intersection of [REDACTED] and [REDACTED] in Manhattan. PO Rivas was the operator of the vehicle. According to PO Rivas, this area is a known drug location and the sidewalk was only 4 feet wide because construction was going on in the area. PO Rivas stated that space on the sidewalk was very limited and because the women were standing on the sidewalk and not moving, pedestrians had to walk in the street. PO Rivas stated that the vehicle was headed northbound on [REDACTED] when he first observed the females. He stated that the vehicle was 4 to 5 feet away from the females when he identified them as individuals that he has arrested before. These females have been identified as [REDACTED] and [REDACTED]

PO Rivas then asked the females to move away from the location as he drove by. He stated that the females moved but he did not observe how far they moved. PO Rivas then continued down [REDACTED] and turned onto [REDACTED]. He then drove down [REDACTED] and turned onto [REDACTED]. Approximately 2 to 4 minutes later, he was back at the intersection of [REDACTED] and [REDACTED]

Upon arriving at the intersection for a second time, PO Rivas observed [REDACTED] and [REDACTED] standing in the same spot with a male. This male has been identified as [REDACTED]. PO Rivas stated that the officers' vehicle was approximately less than 10 feet away when he stated that [REDACTED] notified the women that officers were back on the block. PO Rivas stated that he did not hear [REDACTED] state anything but he read his lips. PO Rivas stated that the females began to move nervously around the phone booth. PO Rivas stated that the women were making several body movements and [REDACTED] also appeared to be nervous. PO Rivas stated that he and Sgt. Cruz believed that something was in the booth.

PO Rivas then parked the vehicle on the side of the street and he and Sgt. Cruz exited the vehicle. PO Rivas stated to the individuals, "I told you earlier to move" and asked each individual for identification. PO Rivas stated that [REDACTED] was very defensive but he did not recall any of the specifics of him being defensive. PO Rivas stated that both females were quiet. PO Rivas stated that he asked each individual for identification one time and each one of them complied. PO Rivas stated that Sgt. Cruz stood near him and supervised the stop.

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## Interview Details

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PO Rivas asked the individuals about their behavior in the booth. He did not recall what each individual stated in regards to this question. PO Rivas then visually observed a box-cutter in [REDACTED] front pocket. [REDACTED] did not have any proof that showed he can carry a box-cutter and he did not explain what he did for work. PO Rivas stated that the top clip of the box-cutter was sticking out of [REDACTED] pocket but the blade was not showing. PO Rivas grabbed the box-cutter from [REDACTED] pocket and [REDACTED] complied with him taking it. PO Rivas stated that he never frisked or searched [REDACTED].

PO Rivas stated that Sgt. Cruz and the females did not make any statements at any point. PO Rivas then went back to the vehicle to write summonses for [REDACTED] [REDACTED] and [REDACTED]. Sgt. Cruz went back to the vehicle with PO Rivas and [REDACTED] box-cutter was also vouchered. PO Rivas stated that it took him approximately 5 to 6 minutes to write three summonses. PO Rivas stated that for the majority of the incident the civilians' demeanor was calm. PO Rivas issued the summonses to each one of the individuals. PO Rivas stated that at no point during the incident did any of the officers' direct profanities or threaten to arrest any of the civilians. PO Rivas also reiterated that at no point did he or any officers frisk or search any civilians.

The undersigned investigator then played an audio recording that [REDACTED] provided in regards to the December 11, 2013 incident. The undersigned investigator started the recording at approximately one minute. At this point in the recording, an officer is heard stating, "Shut the fuck up bro, I heard you, do you think I am deaf?" PO Rivas originally did not identify this officer as himself. The undersigned investigator then continued the recording and the officer is heard giving out his shield number. PO Rivas identified this shield number as his own but did not recognize the voice. At approximately 11:40 a.m., PO Rivas council asked that the record be paused in order for her to address her client. This was granted by the undersigned investigator.

At approximately 11:43 a.m., PO Rivas listened to the recording again. PO Rivas stated that the audio refreshed his recollection of the incident and stated he did not specifically recall the incident before the audio was played. PO Rivas identified the shield number as his own and stated that the voice on the record could be his own. PO Rivas stated that he told [REDACTED] to shut the fuck up because [REDACTED] was acting defensive and extending his hands out at the officers. PO Rivas stated that [REDACTED] continuously asked why the officers were talking to the females and it seemed like he did not want the officers to talk to them. PO Rivas also stated that [REDACTED] stood in front of the females. PO Rivas also stated that [REDACTED] also had one of the females Medicaid cards on his person and this is illegal. PO Rivas recalled telling [REDACTED] to shut the fuck up.

PO Alvarez then played another section of the recording at approximately six minutes in which an officer stated, "Get his ID, get his ID, everybody here is getting a fucking ticket and that's it." PO Rivas identified this voice as Sgt. Cruz's but he did not recall this statement.

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## Interview Details

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Interview: Police Officer Jonathan Rivera  
CCRB Case No. 201402074  
June 10, 2014

*On June 10, 2014, PO Rivera was interviewed at the Civilian Complaint Review Board. This interview began at 8:39 a.m. and concluded at 8:42 a.m.*

*PO Rivera is a 25 year old Hispanic male with black hair and brown eyes. He is 5'8" tall and weighs 190 pounds.*

*PO Rivera worked from 5:30 p.m. on December 11, 2013 to 2:05 a.m. on December 12, 2013. PO Rivera was dressed in uniform and was working anti-crime with Sgt. Jeffrey Heilig and PO Ruben Pagan.*

### **Memo Book**

On December 11, 2013, at approximately 5:30 p.m., present for duty. On December 12, 2013, at approximately 2:05 a.m., end of tour.

### **CCRB Statement**

PO Rivera was not working the tour when this incident occurred. He had no recollection of an incident with [REDACTED] and did not recognize [REDACTED] from a CCRB photograph. PO Rivera stated that at no point during his own tour was he near the vicinity of [REDACTED] [REDACTED] [REDACTED] in Manhattan.



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## Interview Details

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Interview: Sergeant Fredy Cruz  
CCRB Case No. 201402074  
June 17, 2014

*On June 17, 2014, Sgt. Cruz was interviewed at the Civilian Complaint Review Board. This interview began 11:16 a.m. and concluded at 11:44 a.m. The interview then went off the record due to audio problem during the uploading of an audio recording provided by the civilian.*

*Sgt. Cruz was 45 years old at the time of the incident. He is a Hispanic male with brown hair and brown eyes. He is 5'9" tall and weighs 210 pounds.*

*On December 11, 2013, Sgt. Cruz worked from 8:00 a.m. to 4:57 p.m. Sgt. Cruz was working with PO Alejandr Rivas and the officers were in uniform and assigned to conditions. Sgt. Cruz did not recall the type of vehicle the officers were operating.*

### **Memo Book**

Sgt. Cruz did not have any entries in his memo book in regards to this incident. At approximately 3:15 p.m., two under at 163rd Street and Broadway by PO Rivas.

### **CCRB Statement**

On December 11, 2013, at approximately 4:00 p.m., Sgt. Cruz was inside of a police vehicle with PO Rivas on [REDACTED] in Manhattan. Sgt. Cruz did not recall which officer was operating the vehicle. Sgt. Cruz stated that the officers were parked across the street from a phone booth located on the northwest corner of [REDACTED]. According to Sgt. Cruz, at this phone booth, drug dealers meet drug users and escort them to a building on [REDACTED] to buy drugs. Sgt. Cruz stated that at this time, two females were at the phone booth. According to Sgt. Cruz, these females are known drug users and he has arrested them before. These females have been identified by the investigation as [REDACTED] and [REDACTED]. Sgt. Cruz stated that the females were standing near the phone booth located on the corner. Near the phone booth was a construction site and there was limited space for pedestrian traffic to walk. According to Sgt. Cruz, because of the construction, the sidewalk was only four feet wide and because the women were standing near the booth, the sidewalk was only two feet wide. Sgt. Cruz observed pedestrians having to walk in the street because the sidewalk was being blocked.

Sgt. Cruz stated that the officers then U-turned the vehicle from across the street and approached the females. The officers stated from the vehicle, "You guys have to move." The officers stated this one time and the women complied and said yes. The officers did not observe if the females walked away but they proceeded to drive around the corner. Sgt. Cruz did not recall which street the officers turned down but stated they took their time circling the block. As the officers travelled eastbound down [REDACTED] they observed the females at the phone booth again with a man identified by the investigation as [REDACTED]. The officers parked across the street in the same spot again and then made the decision to U-turn and approach the individuals.

As the officers U-turned towards the individuals, the officers observed [REDACTED] staring at them while he was motioning towards the females and tapping one with his arm. Sgt. Cruz stated that he activity was very suspicious and the females in the phone booth were not making a phone call. Sgt. Cruz also stated that the individuals were also standing very close together. Sgt. Cruz also stated that he observed that he read [REDACTED] lips and observed him state, "They are coming, they are coming, and they are here." Sgt. Cruz stated that the females appeared to be nervous as the officers approached. Sgt. Cruz also stated that [REDACTED] seemed to be a little nervous but not as much as the females.

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## Interview Details

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Sgt. Cruz stated that the officers exited the vehicle upon U-turning and approached the three individuals. The officers both stated to [REDACTED] "Why did you tell the girls we were coming?" [REDACTED] denied telling the women that the police were coming. Sgt. Cruz drew his attention to the females and the phone booth while PO Rivas spoke with [REDACTED]. Sgt. Cruz stated to the females, "Didn't I tell you guys to leave?" The females continued to act very nervous. Sgt. Cruz heard some of the conversation PO Rivas had with [REDACTED] and heard him ask again, "Why did you tell the girls we were coming?" Sgt. Cruz stated that he searched the phone booth and found an empty small zip-lock bag in the coin holder but there were no narcotics in the bag.

Sgt. Cruz stated he remained a few feet away from PO Rivas as he spoke with the females. PO Rivas then approached Sgt. Cruz and showed him a box-cutter that [REDACTED] had on his person. PO Rivas stated that he saw the box-cutter sticking out of [REDACTED] pocket. According to Sgt. Cruz, PO Rivas did not articulate any other information about the box-cutter. Sgt. Cruz also stated that at no point was [REDACTED] or [REDACTED] frisked or searched. PO Rivas then asked [REDACTED] for identification and Sgt. Cruz did the same with the females. According to Sgt. Cruz, [REDACTED] produced his own ID and also one of the females IDs. The officers then asked [REDACTED] why he had the ID in his possession and whether or not he was related to the female. Sgt. Cruz did not recall whether or not this was [REDACTED] or [REDACTED] ID. [REDACTED] provided no legitimate reason as to why he had the female's ID.

The officers' interaction with the individuals lasted for approximately ten to fifteen minutes. The officers issued [REDACTED] a summons for his box-cutter and [REDACTED] and [REDACTED] received summonses for disorderly conduct. [REDACTED] asked the officers several times, "Why am I getting a summons." After the summonses were issued, the officers left the location.

Sgt. Cruz stated that he found [REDACTED] to be very odd. It appeared that [REDACTED] did not fit in with the two females that were known narcotics users and prostitutes. Sgt. Cruz also mentioned that [REDACTED] explained that he worked for a church. Sgt. Cruz went on to state that he knew for a fact that one of the females came from the drug house at [REDACTED]. He did not recall if it was [REDACTED] or [REDACTED]. Sgt. Cruz stated that he did not observe the female leave the location but stated that as soon as the officers arrived at the intersection after the U-turn, the female re-approached the phone booth and immediately walked in. Sgt. Cruz stated that he believed that the female was either taking coins from the booth or utilizing narcotics in the booth because the three walls would block any outside observers.



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## Interview Details

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*Attached is the second part of Sgt. Cruz's CCRB Interview. This section of the interview occurred on June 17, 2014, between 11:50 a.m. and 11:56 a.m.*

The undersigned investigator then played an audio recording of the incident that [REDACTED] provided. The undersigned investigator played a portion of the recording that began at approximately one-minute. An officer can be heard stating, "Shut the fuck up bro, I am doing my fucking job here, shut the fuck up, shut the fuck up." Sgt. Cruz identified this voice as that of PO Rivas. The recording was then skipped to six minutes and an officer can be heard stating, "Get his ID, get his ID, everybody is getting a fucking ticket and that's it." Sgt. Cruz identified this voice as his own. Sgt. Cruz explained that he did not direct this statement at the civilians and stated that he was instructing PO Rivas to get their IDs in order to get the situation over with because they had been there for a while. Sgt. Cruz also added that [REDACTED] was not truthful about why he was with the girls and believed that the correct action at this point was to issue the summonses and leave. Sgt. Cruz also added that [REDACTED] continually annoyed the officers and asked why he was receiving a summons. Sgt. Cruz had no idea that [REDACTED] had a microphone on his person and stated that it appeared that [REDACTED] was baiting the officers. Sgt. Cruz believes that this was all premeditated.